

Message Text

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PAGE 01 USUN N 02115 01 OF 02 011442Z
ACTION DLOS-09

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FROM LOS DEL

E.O. 11652: N/A
TAGS: PLOS
SUBJECT: INFORMAL PLENARY OF 29 JUNE ON PART IV (COMPULSORY
DISPUTE SETTLEMENT), ARTICLE 17 (LIMITATIONS ON JURISDICTION)

1. SUMMARY: SWITZERLAND, SUPPORTED BY AUSTRIA, PROPOSED
THAT THE CHAPEAU BE AMENDED SO AS TO MAKE THE EXCEPTION OPTIONAL
RATHER THAN MANDATORY. PERU PROPOSED THAT THE CHAPEAU BE
WORDED IN A MORE PRECISE MANNER AND SUGGESTED THAT ALL ZONES
UNDER COASTAL JURISDICTION BE EXPRESSLY NAMED THEREIN. SWITZER-
LAND PROPOSED THAT THE FINAL CLAUSE "RELATED TO NAVIGATION
AND COMMUNICATION" IN (1)(A) SHOULD BE DELETED THUS EXPANDING
THE SCOPE OF THE CLAUSE RELATING TO "OTHER INTERNATIONALLY LAWFUL
USES OF THE SEA, WHILE PERU AND BRAZIL SUPPORTED THE DELETION OF
THE WHOLE CLAUSE RELATING TO OTHER USES. FRANCE PROPOSED THAT
"AFOREMENTIONED FREEDOMS" IN(1)(B) BE AMENDED TO "AFOREMEN-
TIONED IRGHTS AND FREEDOMS," AND THE U.S. SUGGESTED A SIMILAR
CHANGE IN (1)(A): "FREEDOMS AND RIGHTS OF NAVIGATION
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PAGE 02 USUN N 02115 01 OF 02 011442Z

AND OVERFLIGHT." THE USSR PROPOSED THE DELETION OF SCI-
ENTIFIC RESEARCH IN 1(B), AND SUGGESTED A NEW PARAGRAPH
UNDER WHICH COMPULSORY SETTLEMENT WOULD APPLY ONLY TO
DISPUTES CONCERNING THE CONDUCT OF MARINE SCIENTIFIC
RESEARCH AND WOULD NOT EXTEND TO THE ISSUE OF THE
COASTAL STATES DISCRETIONARY RIGHT TO DENY OR GRANT ITS CONSENT
TO A RESEARCH PROJECT. ITALY, FRANCE, MEXICO, ICELAND,

AND IRAQ SUPPORTED 1(C) AS DRAFTED, WHILE PERU, ECUADOR AND YUGOSLAVIA SUPPORTED DELETION OF ANY REFERENCE TO SCIENTIFIC RESEARCH. SWITZERLAND PROPOSED THAT "MANIFESTLY" BE DELETED FROM 1(D) AS WELL AS THE PROVISIO RELATING TO THE SOVEREIGN RIGHTS OF THE COASTAL STATE. ICELAND, MEXICO, BRAZIL, PERU AND ECUADOR PROPOSED THE DELETION OF 1(D) IN TOTO. MEXICO AND ECUADOR MENTIONED OBLIGATORY CONCILIATION AS A POSSIBLE SUBSTITUTE FOR OBLIGATORY ADJUDICATION IN (1) (D). THE U.S. REPRESENTATIVE SUPPORTED A NUMBER OF PROPOSALS BY VARIOUS DELEGATIONS, PROPOSED THE DELETION OF SCIENTIFIC RESEARCH FROM (1)(C), AND SUGGESTED THAT THE ABUSE OF POWER (ABUS DE POUVOIR) CONCEPT MENTIONED BY MEXICO WOULD CONSTITUTE A VALID APPROACH TO (1)(D).
END SUMMARY

2. SPEAKERS INCLUDED SWITZERLAND, PORTUGAL, ICELAND, AUSTRIA, MEXICO, IRAQ, USSR, BRAZIL, ITALY, FRANCE, YUGOSLAVIA, PERU, COLOMBIA, ECUADOR, THE UNITED STATES, AND CHINA.

3. ARTICLE 17(1) (CHAPEAU) - SWITZERLAND, SUPPORTED BY AUSTRIA, SUGGESTED A REDRAFTING OF THE CHAPEAU SO AS TO MAKE THE EXCLUSION OF MATTERS RELATING TO THE ECONOMIC ZONE OPTIONAL RATHER THAN MANDATORY. ITALY ALSO PREFERRED TO LIMIT THIS EXCLUSION AS FAR AS POSSIBLE BY BROADENING THE EXCEPTIONS IN THE FOUR SUBPARAGRAPHS. MEXICO DEFENDED THE LIMITED OFFICIAL USE

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PAGE 03 USUN N 02115 01 OF 02 011442Z

APPROACH OF THE CHAPEAU, REFERRING BACK TO ARTICLES 44, 46 AND 50-52 OF PART II IN SUBSTANTIATION THEREOF AND EXPLAINING THE JURISDICTIONAL BASES AS THEY RELATED TO ARTICLE 17. PERU EMPHASIZED THAT RESOURCES IN THE ECONOMIC ZONE COULD NOT BE SUBJECT TO COMPULSORY INTERNATIONAL ADJUDICATION UNDER PART IV AND PROPOSED THAT THE CHAPEAU SHOULD BE WORDED IN A MORE PRECISE MANNER BY NAMING EXPRESSLY THE ZONES UNDER NATIONAL JURISDICTION WHICH SHOULD BE EXEMPT FROM PART IV PROCEDURES. BRAZIL INDICATED THE DIFFICULTY OF REDRAFTING THE CHAPEAU PENDING FINAL FORMULATION OF PART II.

4. ARTICLE 17(1)(A) - MOST SPEAKERS, INCLUDING THE REPRESENTATIVES OF MEXICO, PORTUGAL AND ICELAND INDICATED THAT THEY COULD ACCEPT (1)(A) AS DRAFTED. SWITZERLAND PREFERRED THAT THE FINAL CLAUSE "RELATED TO NAVIGATION AND COMMUNICATION" BE REPLACED BY "IF IT HAS OMITTED TO RESPECT THE RIGHTS ESTABLISHED BY THIS CONVENTION IN FAVOR OF OTHER STATES" IN ORDER TO MINIMIZE EXCEPTIONS TO COMPULSORY ADJUDICATION. PERU, SUPPORTED BY BRAZIL AND ECUADOR, ASKED FOR THE DELETION OF ALL AFTER "SUBMARINE CABLES AND PIPELINES," I.E., THE DELETION OF THE PHRASE "AND THEREFORE INTERNATIONALLY LAWFUL USES OF THE SEA RELATED TO NAVIGATION"

TION OR COMMUNICATION."

5. ARTICLE 17(1)(B) - SWITZERLAND OBJECTED TO THE DIFFERENCE BETWEEN (1)(A) AND (1)(B), AS (1)(B) REFERRED TO THE "AFOREMENTIONED FREEDOMS" WHILE (1)(A) REFERRED TO "FREEDOMS IN THE SINGULAR. IN SIMILAR VEIN, FRANCE STATED THAT "AFOREMENTIONED FREEDOMS" BE CHANGED TO "AFOREMENTIONED FREEDOM AND RIGHTS." THE U.S. THEN PROPOSED THAT A REFERENCE TO "FREEDOMS AND RIGHTS" BE ADDED ALSO IN (1)(A) IN PLACE OF "FREEDOM". MOST OTHER SPEAKERS ACCEPTED (1)(B) AS DRAFTED. ITALY POINTED OUT THAT (1)(B) WAS IMPROPERLY INCLUDED IN 17(1) IN THAT IT WAS NOT RELATED TO THE RIGHTS AND JURISDICTION OF THE COASTAL STATE ENUMERATED IN 17(1), BUT TO RIGHTS AND DUTIES OF OTHER STATES; IT SHOULD BE LIMITED OFFICIAL USE

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PAGE 04 USUN N 02115 01 OF 02 011442Z

INCLUDED IN A SEPARATE PARAGRAPH.

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PAGE 01 USUN N 02115 02 OF 02 011459Z
ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 ACDA-07 AGRE-00 AID-05 CEA-01
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LIMITED OFFICIAL USE SECTION 2 OF 2 USUN 2115

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6. ARTICLE (1)(C) - THE USSR PROPOSED THAT REFERENCE TO SCIENTIFIC RESEARCH BE DELETED IN (1)(C) AND THAT A NEW

SUBPARAGRAPH TO (1)(A) BE ADDED TO READ. "WHEN IT IS CLAIMED THAT A COASTAL STATE WHICH HAS GIVEN CONSENT TO THE CONDUCT OF MARINE SCIENTIFIC RESEARCH NEVERTHELESS OBSTRUCTS ITS IMPLEMENTATION, AND A DISPUTE WHICH AROSE IN THIS CONNECTION IS NOT SETTLED IN ACCORDANCE WITH PARAGRAPH 1 OF ARTICLE 76 OF PART III." THE USSR DELEGATE EXPLAINED THAT UNDER THIS AMENDMENT, IF A COASTAL STATE SHOULD PLACE ANY OBSTACLES IN THE WAY OF MARINE SCIENTIFIC RESEARCH TO WHICH IT HAS CONSENTED, THIS ACTION OF THE COASTAL STATE WOULD BE SUBJECT TO COMPULSORY SETTLEMENT; BUT THE DISCRETIONARY DECISION TO GRANT OR REFUSE THE RIGHT TO CONDUCT SCIENTIFIC RESEARCH WOULD NOT BE SUBJECT THERETO. MEXICO, ICELAND, AND IRAQ ACCEPTED 1(C) AS DRAFTED. SWITZERLAND STATED THAT AS THE EXACT NATURE OF SCIENTIFIC RESEARCH AND MARINE POLLUTION IN PART III AS YET REMAIN UNRESOLVED, IT WAS PREMATURE TO ADDRESS THEM DEFINITELY IN LIMITED OFFICIAL USE

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PAGE 02 USUN N 02115 02 OF 02 011459Z

ARTICLE 17. ECUADOR AND PERU ASKED FOR DELETION OF THE PROVISION CONCERNING SCIENTIFIC RESEARCH IN (1)(C). ITALY, SUPPORTED BY FRANCE AND THE U.S., SUPPORTED (1)(C) AS DRAFTED, BUT SUGGESTED THAT "SPECIFIED INTERNATIONAL STANDARDS OR CRITERIA" BE REPLACED BY "APPLICABLE RULES AND STANDARDS".

7. ARTICLE 17(1)(D) - SWITZERLAND PROPOSED THREE DELETIONS: OF THE WORD "MANIFESTLY"; THE PROVISIO CLAUSE RELATING TO SOVEREIGN RIGHTS OF THE COASTAL STATE; AND THE WORD "LIVING" BEFORE "RESOURCES". ICELAND OBJECTED STRONGLY TO THE INCLUSION OF (1)(D), AND POINTED OUT THAT THE ABUSE OF POWER (ABUS DE POUVOIR) CONCEPT WAS ONE OF PRIVATE LAW, AND CANNOT BE APPLIED IN RELATIONS BETWEEN STATES. TOO MANY SUITS WOULD OCCUR WERE "MANIFESTLY" RETAINED. AUSTRIA REPLIED, GIVING THE TRADITIONAL LANDLOCKED GEOGRAPHICALLY DISADVANTAGED STATES' POSITION, REFERRING TO THE TWIN DANGERS OF CREEPING JURISDICTION AND THE CONVERSION OF THE ZONE INTO A TERRITORIAL SEA, AND SUPPORTED THE SWISS PROPOSAL TO EXTEND INTERNATIONAL JURISDICTION TO NON-LIVING RESOURCES. MEXICO, BRAZIL, COLOMBIA, PERU AND ECUADOR SUPPORTED THE DELETION OF (1)(D), ECUADOR MAINTAINING THAT ARTICLES 47, 50 AND 59 OF PART II AND ARTICLE 33 OF THE UN CHARTER PROVIDED ADEQUATE SAFEGUARDS FOR THE INTERESTS OF THOSE STATES IF (1)(D) WERE DELETED. IRAQ, FRANCE AND ITALY SUPPORTED THE SWISS AMENDMENTS TO 1(D).

8. THE U.S. REPRESENTATIVE, IN RESPONDING TO THE OBSERVATIONS MADE BY THE SEVERAL DELEGATION, BELIEVED: THAT THE PROPOSAL TO REFER TO VARIOUS ZONES IN THE CHAPEAU MERITED CONSIDERATION; THAT THE PROPOSAL THAT 1(B) BE MADE A SEPARATE PARAGRAPH WAS SOUND; THAT THE ITALIAN/FRENCH

SUGGESTION THAT "INTERNATIONAL STANDARDS OR CRITERIA" IN
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PAGE 03 USUN N 02115 02 OF 02 011459Z

1(B) BE MODIFIED SO AS TO ENCOMPASS A REFERENCE TO RULES
FOR SCIENTIFIC RESEARCH WAS DESIRABLE; AND THAT (1)(C)
REFERRING TO THE CONDUCT OF SCIENTIFIC RESEARCH SHOULD BE
RETAINED. WITH REFERENCE TO THE CRUCIAL ISSUE OF (1)(D),
THE U.S. REPRESENTATIVE INDICATED THAT IT WAS ALREADY
LIMITED IN SCOPE AS IT REFERRED TO "LIVING" RESOURCES ONLY.
HE PROPOSED THAT "GROSSLY FAILED" COULD BE USED IN LIEU
OF "MANIFEST", AND THAT THE ABUSE OF RIGHTS CONCEPT ALSO
WAS A FIT ONE FOR APPLICATION TO INTERNATIONAL AS WELL AS
NATIONAL FORA, AS EARLIER POINTED OUT BY JUDGE ALVAREZ OF
CHILE. HE NOTED ALSO THE PORTUGUESE PROPOSAL EMPHASIZING
THE NEED TO ENSURE ADEQUATE CONSERVATION OF THE LIVING
RESOURCES OF THE SEA.

9. CHINA REITERATED HER POSITION THAT VOLUNTARY ACCEPTANCE
OF COMPULSORY DISPUTE SETTLEMENT BY A PARTY IS A PRE-
REQUISITE TO ACCEPTANCE OF PART IV. REGARDING ARTICLE 17,
AREAS UNDER THE EXCLUSIVE JURISDICTION OF THE COASTAL STATE
SHOULD BE SUBJECT TO NATIONAL LAWS ONLY AND NOT SUBJECT
TO COMPULSORY SETTLEMENT. ANY OTHER APPROACH WOULD BE
DETRIMENTAL TO THE EXCLUSIVE SOVEREIGNTY OF THE COASTAL
STATE, AND THE SUPERPOWERS WOULD TAKE ADVANTAGE OF THE
SITUATION AT THE EXPENSE OF THE COASTAL STATE. CHINA
SUPPORTED THE DELETION OF ARTICLE 17 IN TOTO, AND
SHE STATED THERE SHOULD BE A PROVISION THAT ALL DISPUTES
ARISING IN THE ECONOMIC ZONE, INCLUDING THOSE RELATING TO
MILITARY ACTIVITIES, SHOULD BE SUBJECT TO THE JURISDICTION
OF THE COURTS OF THE COASTAL STATE.

10. THE CHAIRMAN ADJOURNED THE INFORMAL PLENARY UNTIL
FRIDAY, JULY 1, WHEN THE DISCUSSION OF ARTICLE 17 WOULD
BE RESUMED.
YOUNG

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